FILE COPY.

Supreme Court U.S.
FILED
APR 25 1904
JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. [illegible]

EX PARTE, THE REPUBLIC OF COLOMBIA,
PETITIONER.

Petition for Writ of Prohibition to the Circuit Court of the United States for the Northern District of West Virginia.

WM. G. JOHNSON,
Counsel for the Republic of Colombia.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. Original.

EX PARTE, THE REPUBLIC OF COLOMBIA, PETITIONER.

Petition for Writ of Mandamus to the Circuit Court of the United States for the Northern District of West Virginia.

The petition of the Republic of Colombia, a body corporate and politic under the law of nations, and a foreign state within the meaning of the Constitution of the United States, respectfully shows:

1. That petitioner is a foreign state at peace with the United States and holding diplomatic relations therewith, and that its accredited diplomatic representative, duly recognized and received as such by the United States, is Thomas Herran, charge d'affaires *ad interim*, as shown by the certificate of the Secretary of State of the United States filed herewith, and that the said Thomas Herran is, as the national representative of petitioner in the United States and as its agent *ad hoc*, fully authorized and empowered to bring this petition in the name and on be half of this petitioner, the Republic of Colombia

2. Petitioner further shows that on the 15th of December,

1897, it filed its original bill of complaint in the then Circuit Court of the United States for the District of West Virginia, now the Circuit Court of the United States for the Northern District of West Virginia, against the Cauca Company and The Colombian Construction and Improvement Company, two certain commercial corporations created by and existing under the laws of the State of West Virginia, praying that a certain award against petitioner for the sum of $462,048.93, made by arbitrators under a submission by the petitioner and the said Cauca Company, be decreed to be null and void and be vacated and set aside; and such proceedings were had therein that the said circuit court, on the 11th day of March, 1901, by its final decree, adjudged, ordered, and decreed in the terms shown by the following duly certified copy of said decree, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA, AT CLARKSBURG.

THE REPUBLIC OF COLOMBIA, COMPLAINANT,
vs.
THE CAUCA COMPANY AND THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY, DEFENDANTS,
and
THE CAUCA COMPANY AND THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY, COMPLAINANTS IN CROSS-BILL,
vs.
THE REPUBLIC OF COLOMBIA, DEFENDANT TO CROSS-BILL.
} In Equity.

This cause came on to be heard at the October Term, A. D. 1900, upon the pleadings and proofs, and was argued by counsel; and thereupon, upon consideration thereof, it is,

this 11th day of March, A. D. 1901, ordered, adjudged, and decreed, as follows, to wit:

First. That the award made and executed October 22, 1897, by Lewis M. Haupt, chairman, and Christian F. Schramme, commissioners, constituting a majority of the commission appointed under the convention of January 4, 1897, between the Republic of Colombia and the defendant, the Cauca Company, for the sum of $652,048.93, less the sum of $200,000, theretofore paid by the complainant, leaving the amount of said award $452,048.94, payable in the city of New York, in gold coin of the United States of America, on January 26, 1898, be and the same is hereby approved, ratified, and confirmed as and for a valid and binding award for and up to the sum of three hundred and fifty-seven thousand four hundred and four dollars and two cents ($357,404.02) in gold coin of the United States of America, to be paid by the Republic of Colombia to the Cauca Company, in the city of New York, on the 26th day of January, A. D. 1898, with interest thereon from said date, and that as to any amount in excess of the sum above mentioned and payable as aforesaid, the following separable items of said original award, namely: $13,643.33, interest on the cost of the concession to the Cauca Company; $48,668.18, interest on the cost of the physical construction of the railroad; $32,333.40, interest on the actual amount paid in by the bondholders, making a total of $94,644.91, be, and the same is, hereby disallowed, and the temporary injunction heretofore granted is as to said items of excess, aggregating $94,644.91, hereby made perpetual; and that the special allowance of $10,000 to Marcus Stine, Esq., counsel for the Cauca Company before said commission, as part of the costs incident to said commission, be, and is, hereby also disallowed, and the temporary injunction heretofore granted be, and is, hereby made perpetual as to such special allowance.

Second. That the complainant and the defendants each

pay their own costs, without allowance of costs in favor of either as against the other.

(Signed) NATHAN GOFF,
U. S. Circuit Judge.

March 11, 1901.

UNITED STATES OF AMERICA,
Northern District of West Virginia: } *ss:*

I, L. B. Dellicker, clerk of the Circuit Court of the United States for the Northern District of West Virginia, do certify that the foregoing is a true copy of decree entered in case The Republic of Colombia *vs.* The Cauca Company and The Colombian Construction and Improvement Company and now of record in my office.

In testimony whereof I hereto set my hand and the seal of said court at Clarksburg in said Northern District this 10 day of March, 1904, and in 128 year of the Independence of the United States of America.

L. B. DELLICKER,
[Seal of court.] *Clerk U. S. C. C. N. D. W. Va.*

3. From the said decree of said circuit court this petitioner appealed to the United States Circuit Court of Appeals for the Fourth Circuit, assigning as error in the said decree, *inter alia*, that the said court erred in decreeing interest to be due upon any part of said award, as by the transcript of record, afterwards in this court, appears (Rec. p. 1310).

4. That thereafter such proceedings were had on the said appeal that the said Circuit Court of Appeals on the 8th day of February, A. D. 1902, by its judgment and decree, affirmed the said decree of the said circuit court.

5. That thereupon this petitioner appealed from the said decree of the said Circuit Court of Appeals to this court, assigning for error in the said decree, *inter alia*, that the said

Circuit Court of Appeals erred in decreeing interest to be due upon any part of said award, as by the transcript of record of said cause in this court appears (Rec. p. 1323).

6. That thereafter the said cause came on regularly to be heard in this court and was argued by counsel and considered by the court, whereupon this court, by its opinion and decree rendered on the 18th day of May, 1903, reversed the said decree of the said Circuit Court of Appeals and remanded said cause to the Circuit Court of the United States for the Northern District of West Virginia with directions to enter a decree confirming the award for and up to the sum of $193,204.02, as will appear from the opinion of this court reported in 190 U. S. Reports, p. 524, and by the mandate of this court issued on the 20th day of June, A. D. 1903, a duly certified copy of which mandate here follows, to wit:

United States of America, *ss:*

The President of the United States of America.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of West Virginia.

[SEAL.]

GREETING: Whereas, lately in the United States Circuit Court of Appeals for the Fourth Circuit, in a cause between The Republic of Colombia, appellant, and The Cauca Company and The Colombian Construction and Improvement Company, appellees, wherein the decree of the said Circuit Court of Appeals, entered in said cause on the 8th day of February, A. D. 1902, is in the following words, viz:

> "This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of West Virginia, and was argued by counsel.
>
> "On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed with costs.
>
> "CHARLES H. SIMONTON,
>
> "*February 8, 1902.* *Circuit Judge.*"

as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand nine hundred and two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, reversed with costs; and that the said appellant, the Republic of Colombia, recover against the said appellees nine hundred and sixty dollars for its costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the Circuit Court of the United States for the Northern District of West Virginia, with directions to enter a decree confirming the award for and up to the sum of $193,204.02.

May 18, 1903.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of June, in the year of our Lord one thousand nine hundred and three.

(Signed) JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

Costs of Appellant.

Clerk	$836 45
Printing part of record	103 55
Attorney	20 00
	$960 00

A true copy. Test: JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.
[SEAL OF COURT.]

7. That thereafter, to wit, on the 16th day of July, 1903, the said cause came on to be heard before the said Circuit Court of the United States for the Northern District of West Virginia, upon the mandate of this court, for the entry in said cause of the decree, by the mandate of this court directed to be entered, and was argued by counsel, whereupon the said Circuit Court entered its decree upon said mandate, a duly certified copy whereof here follows, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF WEST VIRGINIA.

THE REPUBLIC OF COLOMBIA, COMPLAINANT BY ORIGINAL BILL,

vs.

THE CAUCA COMPANY AND THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY, DEFENDANTS.

DECREE OF COURT UNDER MANDATE AND OPINION OF THE SUPREME COURT OF THE UNITED STATES.

This cause having been instituted in this court by the Republic of Columbia against the Cauca Company and the Columbian Construction and Improvement Company by bill filed December 15th, 1897, and said cause having been heard at the October Term, 1900, and a decree therein entered by this court on March 11th, 1901, as appears from the proceedings of this court in C. O. B. fo. 370; and an appeal having been prayed by the Republic of Columbia,

complainant by original bill, and the defendants in a cross-appeal unto the United States Circuit Court of Appeals for the Fourth Circuit, which petition and prayer for appeal from the decree of this court so entered was filed in this court on the 18th day of March, 1901, and was granted on said date, as appears from the records of this court in C. O. B. fo. 372, which said appeal was duly prosecuted by the said complainant and appellant, the Republic of Columbia, in the said United States Circuit Court of Appeals for the Fourth Circuit, and came on to be heard at the November Term thereof, 1901; and the said United States Circuit Court of Appeals for the Fourth Circuit did on the 8th day of February, 1902, enter its decree whereby the decree of this court, of date March 11th, 1901, was affirmed; and whereas, an appeal from the said decree of the said United States Circuit Court of Appeals for the Fourth Circuit was duly prayed and allowed unto the Supreme Court of the United States, and which said appeal came on to be heard in the Supreme Court of the United States at the October Term thereof, 1902, it was by the said Supreme Court of the United States, on the 18th day of May, 1903, adjudged and decreed that the decree of this court heretofore passed on said 11th day of March, 1901, be reversed and the cause remanded unto this court with directions to enter a decree confirming the said award for and up to the sum of one hundred and ninety-three thousand two hundred and four dollars and two cents ($193,204.02); and whereas, the mandate of the said Supreme Court of the United States and the opinion thereof passed by it in said cause have been received, and this court was ordered and adjudged by said Supreme Court of the United States to enter a decree as mentioned in said mandate and opinion—now, therefore, in conformity with the said mandate and opinion of the Supreme Court of the United States, counsel for the respective parties having been heard, it is by the Circuit Court of the United States for the District of West Virginia adjudged, ordered and decreed that

the award made and executed October 22d, 1897, by Lewis M. Haupt and Christian F. Schramme, commissioners constituting a majority of the commission appointed by the convention of January 4th, 1897, between the Republic of Colombia and the defendant, the Cauca Company, for the following items is approved, ratified and confirmed as and for a valid and binding award for the following items:

Agreed cost of work on the ground and rolling stock.....	$233,909.14
Salaries of executive officers.....	108,181.42
Travelling expenses of officers...	29,385.88
Expenses and incidentals New York office.....	21,727.58
	$393,204.02
Deduct paid on account.....	200,000.00
Amount of award.....	$193,204.02

And it is further adjudged, ordered and decreed that the said sum of one hundred and ninety-three thousand two hundred and four dollars and two cents ($193,204.02) in gold coin of the United States of America be paid by the Republic of Colombia unto the Cauca Company, with interest at 6 per cent thereon from the 26th day of January, A. D. 1898;

And it is further adjudged, ordered and decreed that the Cauca Company pay costs in said Circuit Court of Appeals and the Supreme Court of the United States, less the sum of $1,217.50, acknowledged in open court by the Republic of Colombia to have been paid, and that in lieu of execution for said costs the Republic of Colombia is authorized to set off said costs against the said sum of one hundred and ninety-three thousand, two hundred and four dollars and two cents.

NATHAN GOFF,
U. S. Circuit Judge.

July 16th, 1903.

UNITED STATES OF AMERICA,
Northern District of West Virginia. } ss:

I, L. B. Dellicker, clerk of the Circuit Court of the United States for the Northern District of West Virginia, do certify that the foregoing is a true copy of the final decree in case The Republic of Colombia *vs.* The Cauca Company and The Colombian Construction and Improvement Company and now of record in my office.

In testimony whereof I hereto set my hand and the seal of said court at Clarksburg in said Northern District this 10 day of March, 1904, and in 128 year of the Independence of the United States of America.

L. B. DELLICKER,
[Seal of Court.] *Clerk U. S. C. C N. D. W. Va.*

To which decree petitioner by its counsel objected on the ground that by the mandate of this court no interest could be decreed to be paid upon the amount of said part of said award adjudged and decreed by this court to be valid, from the said 26th day of January, A. D. 1898, when, by the terms of said award, the whole of said award, both valid and invalid, was made payable; whereas, by the said decree of said circuit court interest is decreed to be paid upon the said part of said award so adjudged and decreed by this court to be valid from and after the said 26th day of January, A. D. 1898, a period of more than five years before the adjudication of said award by the decree of this court.

8. Petitioner is advised and therefore charges that the said decree of the said circuit court is not in pursuance of nor in accord with the mandate of this court, in that it adds to the decree confirming the said award for and up to the sum of $193,204.02, as authorized and directed by this court,

the further requirement that petitioner pay the amount of said award as decreed by this court to be valid, with interest at the rate of six per centum per annum upon the said sum of one hundred and ninety-three thousand two hundred and four dollars and two cents ($193,204.02), from the said 26th day of January, A. D. 1898, and that the said decree of the said circuit court is, therefore, to that extent, erroneous and void, and should be vacated and set aside.

9. Petitioner further shows that it is advised that by the statutes in force regulating appeals from the United States circuit courts, no direct appeal lies to this court from the said decree of the said circuit court, and petitioner is further advised and therefore alleges that the said Circuit Court of Appeals for the Fourth Circuit is without jurisdiction to adjudge and decree as to the true intent and meaning of the mandate of this court to the said circuit court; and that petitioner is therefore without remedy in the premises save by direct application to this court for its writ of mandamus to require the said Circuit Court for the Northern District of West Virginia to vacate the said decree and to enter a new decree in conformity with the mandate of this court.

The premises considered, petitioner therefore prays:

First. That this honorable court will issue its writ of mandamus to the said Circuit Court of the United States for the Northern District of West Virginia commanding said court to vacate and set aside the said decree entered on the 16th day of July, A. D. 1903, and to enter a new decree in said cause, in conformity with the mandate of this court, confirming the said award for and up to the sum of $193,204.02 and without more.

Second. That a rule may be issued out of this court to the said Circuit Court of the United States for the Northern District of West Virginia, commanding said court upon a day to be fixed in said rule to show cause in this court why the said writ of mandamus should not issue as prayed.

And for such other relief in the premises as to this court may seem fit and be in accordance with law.

THE REPUBLIC OF COLOMBIA.

By its duly authorized agent, THOMAS HERRAN, Charge d'Affaires *ad interim* of the Republic of Columbia in the United States of America.

WM. G. JOHNSON,
Counsel for the Republic of Colombia.

CITY OF WASHINGTON, *District of Columbia.* } ss:

I do solemnly swear that I have read the annexed petition of the Republic of Colombia and know the contents thereof and that the facts therein stated as true are true and those stated on information and belief I verily believe to be true.

THOMAS HERRAN.

Subscribed and sworn to before me this 14th day of March, A. D. 1904.

OSCAR LUCKETT,
Notary Public, D. C.

[Notarial Seal.]

No. 23,684.

UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that Senor Don Thomas Herran is duly accredited to this Government as Charge d' Affaires ad interim, of the Republic of Colombia.

In testimony whereof, I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed. Done at the City of Washington this 12th day of March, A. D. 1904, and of the Independence of the United States of America the one hundred and twenty-eighth.

[SEAL.] JOHN HAY.